

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 19 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MULSHANKER VASANTRAM DAVE

Versus

JAMNASHANKER SHIVSHANKER DAVE & OTHERS

Appearance:

MR PV NANAVATI for Petitioner

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 06/01/97

ORAL JUDGEMENT

1. The present appellant in this appeal under section 100 of CPC is the original defendant no.1 whereas respondent nos.1 & 2 are the original plaintiffs, and respondent no.3 is the original defendant no.2.

2. The plaintiffs had filed suit in the Court of Civil Judge (S.D.) Godhra, for a declaration that the suit property consisting of certain land with super structures is of their ownership, and does not belong to

defendant no.1. They further sued for prohibitory injunction restraining the defendant no.1 from recovering any rent for two storeyed house from the defendant no.2. They also prayed for a decree of accounts in respect of the rent recovered by the defendant no.1 from the defendant no.2, w.e.f. 26th June, 1969.

3. The trial court, after considering the pleadings of the parties, raised the necessary issues at ex.32, and the parties accordingly led evidence in support of their respective cases. After considering the totality of the evidence on record, the trial court concluded, on the relevant issues, by recording findings of fact to the effect that the plaintiffs have succeeded in proving that they are exclusive owners of the suit property, and accordingly decreed the plaintiffs' suit.

4. The defendant no.1 thereupon preferred an appeal to the District Court under section 96 of CPC, which was dismissed. It is from this judgment and decree dismissing the appeal, that the present appeal has been filed by the original defendant no.1.

5. The short facts which are relevant for the purposes of the present appeal, and which are not in dispute and/or indisputable, are as under.

5.1 Shivshanker and Vasantram were real brothers. Vasantram had no issue while Shivshanker had three sons namely; Jamnashanker(original plaintiff no.1), Chandrashanker (father of plaintiff no.2) and Mulshanker(original defendant no.1). It is also not in dispute that Bharatkumar (plaintiff no.2) is actually the son of Jamnashanker, but was given in adoption to Chandrashanker, who had also died without leaving any heir.

5.2 The factual controversy centers around whether Mulshanker was given in adoption to Vasantram.

5.3 The plaintiffs had filed a suit for a declaration of title in respect of the suit property, and the necessary consequential reliefs, on the basis that Mulshanker (original defendant no.1) had no right, title or interest in the suit property, on the ground that Mulshanker had been given away in adoption to Vasantram, and hence had no surviving interest w.e.f. the date on which he was given away in adoption, in the property of his natural father, Shivshanker.

5.4 Although some effort was made in the present

appeal to raise contentions as to whether the plaintiffs had succeeded in showing that a valid adoption in respect of Mulshanker had taken place or otherwise, it had ultimately to be conceded that this is basically a question of fact. It could not be disputed that giving and taking in adoption is not merely or only a matter of documentary evidence, but collateral circumstances, as also the conduct of parties is equally good evidence, which the courts are bound to appreciate.

5.5 Learned counsel for the respective parties have discussed before me the impugned judgment of the lower appellate court.

5.6 From the evidence it is found, that it could not be disputed that such factual finding is eminently correct, that Vasantram had seven or eight properties at Udaipur, which came to be inherited by Mulshanker namely; the defendant no.1. These properties could have been inherited by Mulshanker only if he had been taken in adoption and not otherwise. It is also a finding of fact recorded by both the courts below that Mulshanker inherited these properties of Vasantram not by way of gift (as orally contended by him) nor under any will made in his favour. It appears therefore that the defendant no.1 succeeded to those properties of Vasantram by intestate succession, and this could only be on the basis of his having been accepted as an adopted son by Vasantram and the family members concerned.

5.7 Furthermore, Mulshanker has admitted in his deposition on oath that he had taken out an insurance policy wherein he had described himself as the son of Vasantram.

6. It is not necessary in the present appeal under section 100 of CPC to discuss in detail the evidentiary material so as to justify the findings of fact recorded by the lower appellate court. Suffice it to say that, as a result of the discussion of the judgement of the lower appellate court, it becomes crystal clear that both the courts below have, on the basis of ample and cogent evidence on record, recorded the factual finding that Mulshanker had been given in adoption to Vasantram. This finding of fact has not been challenged and indeed cannot be challenged in the present appeal.

7. Once it is established that Mulshanker is the adopted son of Vasantram, it naturally follows that he would lose any interest he may have had in the properties of his natural father namely; Shivshanker. Under the

circumstances, the decree passed by the trial court(and confirmed by the lower appellate court) is based entirely on findings of fact, and by no stretch of imagination can such evidence be disputed by an academic discussion on the Law of Adoption.

8. In the premises aforesaid, there is no substantial question of law which arises in the present appeal, and the same is therefore, dismissed with no order as to costs.

amp/-